* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 308/2005

Reserved on : 09.05.2007
Pronounced on : 14.5.2007

VIRENDER KUMAR ..... Petitioner
Through Mr. K.B. Andley, Sr. Advocate with
Mr. M.L. Yadav, Advocate

versus

C.B.I. AND ANR. ..... Respondents
Through Mr. R.M. Tiwari, Advocate for the CBI.

CORAM:
HON'BLE MR. JUSTICE S.RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr.Justice S. Ravindra Bhat :

1. The revisionist is aggrieved by an order on charge, made by the learned Additional Sessions Judge; he has been charged with commission of offences under Sections 7 and 15 of the Prevention of Corruption Act, 1988 ("the Act") and under Sections15 read with 13(2) r/w 13(1) (d) of the Act.

2. The brief facts are that according to the complainant, one Shri Verghese, a dispute had existed between him and his 11 workers regarding their claim under

the Minimum Wages Act. The dispute was settled and copies of the settlement alongwith affidavits of the claimants had been filed before the accused, who was required to pass appropriate orders in terms of these settlements. He did not pass the order and issued notice to the complainant threatening to impose a penalty of Rs.5 lakhs in the case; he sought for a bribe of Rs.2.5 lakhs. The conversion between the two was recorded, in respect of the demand. The prosecution had also sought to trap the petitioner accused, but that proved abortive. The trial court, after considering the materials, framed the charges through the impugned order.

3. Mr. Andley, learned counsel for the petitioner urged that the charges could not have been framed, as there were no material in support of the allegations. It was urged that the trap initially laid was unsuccessful, and therefore, the claim of the petitioner having demanded or accepted any bribe could not be sustained. He further argued that nothing existed on record suggestive of the petitioner having indulged in conduct that led to wrongful gain to someone, or wrongful loss to the government, or the public, or someone else. Therefore in the absence of plausible evidence, necessary to fulfil the ingredients of the offence, the impugned order could not be sustained.

4. Learned counsel also submitted that the trial court could not have

considered the transcript of tape recording as evidence, since the primary evidence was not considered by it. The court considered an inaccurate transcript of the alleged tape-recording. Such material did not constitute legally permissible evidence, and could not be the basis of charge, and could never be sufficient to convict the petitioner, in the trial.

5. The impugned order, to the extent it is material, reads as follows:

> *"I have considered the submissions made by ld. Defence counsel and also gone through the judgments relied upon by him. None of the judgments referred to above pertain to the stage of charge and otherwise also not applicable to the facts of the present case. In the present case, as per averments made in the complaint and in the chargesheet, the dispute between the complaint and the 11 labourers in respect of their claim under the Minimum Wages Act had been settled and copy of the settlement alongwith affidavits of 11 labourers had already been filed before the accused. the accused was required to pass appropriate orders in terms of the settlement. The accused did not pass the order and issued notice to Dr. Varghese i.e. the complainant and threatened to impose penalty of Rs.5 lacs in the case bribe of Rs.2.5 lacs was not paid to him. The conversion has been recorded between the accused and complainant in respect of the demand. It is prosecution's own case that the trap could not succeed as once the accused did not accept the money in the presence of shadow witness and second time when the complainant reached the office of the accused at the appointed time i.e. 2.30pm, the accused had already left his office for some unknown destination for which even his superior officers were not aware. the CFSL report in respect of the tape recorded conversation has given positive opinion and keeping in view the allegations made in the complaint and the conversation as reflected in the transcript, I am of the view that a prima facie case under Sec.7 of PC Act and under Sec.15 r/w 13(2) r/w 13(1) (d) of PC Act is made out against the accused. In the present cas the amount claimed by the labourers under the Minimum Wages Act has no relevance because the bribe was allegedly demanded for not imposing the penalty on the*

complainant. It is also mentioned in the chargesheet that the proceedings w.e.f. 13.12.2002 onwards have not been reflected in the ordersheet and further more than accused had no necessity to accompnay the complaint to Hotel Taj Mann Singh for ensuring that labourers get minimum wages."

6. As is evident from the facts of this case, the charges relate not to the petitioner having accepted money, or having actually caused wrongful loss to someone, or wrongful gain to himself, or someone, detrimental to public interest, but of his having committed acts, or being guilty of acts that amounted to attempt to obtain gratification. This conduct is an offence, under Section 7, which reads as follows:

"7. PUBLIC SERVANT TAKING GRATIFICATION OTHER THAN LEGAL REMUNERATION IN RESPECT OF AN OFFICIAL ACT.

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.-(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money..."

Section 13(1) variously defines criminal misconduct; sub-clause (d) defines three situations where a public servant, abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; Section 13(2) indicates the punishment. Section 15 of the Act provides that whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

7. I have carefully gone through the charge-sheet, and the trial court records, including statements of witnesses. As many as 25 witnesses were examined during investigation; the statements, under Section 161, support the prosecution version about the petitioner having spoken to the complainant, giving him the option, of having to pay Rs. 5 lakhs as penalty, or pay him a bribe amount. The complainant's version was recorded in a statement under Section 161 Cr.P.C.; he supported the prosecution, and has gave details of the demand and attendant circumstances. Therefore, it is wrong to suggest that the only evidence allegedly implicating the petitioner is the tape-recording.

8. As far as the tape recording is concerned, the trial court went by the transcript furnished by the investigation agency. I see nothing wrong in the procedure. Also, the probative value of such evidence, and the accuracy of the recording, are matters for trial. It is well known that the court only carries out a

broad evidence sifting exercise; if it feels that the materials are prima facie sufficient to show grave suspicion, it needs go no further. The weight of evidence and whether it is legal, or sufficient to secure a conviction, are not matters the court, at the time of charge framing, considers.

9. For the foregoing reasons, I find no merit in the present revision petition; it is accordingly dismissed without any order as to costs.

(S. RAVINDRA BHAT)
JUDGE

May 14, 2007